Ms. Brittany Scott, interning in my congressional office this summer. When you see their passion and determination to commit, work, and act to change the lives of their friends, siblings, and the Nation's way of serving those most in need, you know we must take action.

This legislation is good; it is right. But we can do better, and we must do better. Across the country, case workers lack proper training and are overworked and underpaid. Foster children are expelled from the system at 18 with little to no support. Kinship care providers and adoptive parents lack support when caring for foster children. And when programs are in place they are often fragile because of lack of funding. We need to help those on the front lines.

One of the major components of Mr. MCDERMOTT's broader child welfare reform bill that I support is revising the so-called ''look back'' provision. Using an outdated 1996 Federal standard to determine poverty levels is a major reason that children are denied Title IV–E assistance in Georgia. Currently, only half of the abused and neglected children in foster care across the country are eligible for Title IV–E funding.

States continue to lack the funding needed to adequately improve services to youth in the child welfare system. States also face drastic cuts to the social services they provide as a result of the Deficit Reduction Act. These are just some of the many challenges that face our Nation's child welfare systems. We cannot afford to ignore them any longer.

We need to look across the board at new and diverse ways to make the process work better. We must come together and do what is right for America's foster care youth. Again, I applaud my Ways and Means colleagues for this strong bipartisan effort. I look forward to continuing to work with them on improving services, support, and assistance for those most in need.

I urge all of my colleagues to vote yes on H.R. 6307.

FISA AMENDMENTS ACT OF 2008

SPEECH OF

HON. PETER HOEKSTRA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, June 20, 2008

Mr. HOEKSTRA. Madam Speaker, I would also like to clarify a number of aspects of this legislation on behalf of myself and the distinguished Ranking Member of the Judiciary Committee, Mr. SMITH.

We have faced substantial challenges in reconciling fundamentally different philosophies on how to modernize the Foreign Intelligence Surveillance Act (FISA). The text of H.R. 6304 was carefully, deliberately crafted on a bipartisan basis to reconcile these differences. Other statements by media reports, or the reports or work product of any of outside groups reflect their own views and should not be construed as determinative guidance with respect to legislative intent. While the text of the bill ultimately controls interpretation of the bill, we would like to note our understanding of H.R. 6304 as the Ranking Members of the Permanent Select Committee on Intelligence and the Committee on the Judiciary respectively on three matters within this legislation.

ROLE OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT

The authority of the Foreign Intelligence Surveillance Court (FISC) or any court in approving foreign intelligence collection generally, and specifically the surveillance of foreigners located in other countries, was an issue of great debate during negotiations and the resulting text was delicately constructed. For the first time ever, this bill will statutorily insert the FISA court in a limited way into the Executive's Constitutional authority to collect foreign intelligence information targeting foreign persons in foreign countries. This unprecedented move was an accommodation to those who believed that the court could provide some sort of additional check to ensure that the IC is properly using its procedures to target a foreigner abroad and to minimize U.S. person information that may be incidentally obtained. There is no mechanism included in the text that would provide for a probable cause or similar type of review that the FISC has done in the past with respect to traditional FISA applications, but rather a method for the FISC to verify that the Intelligence Community is following the law and its own procedures when it targets foreigners abroad for surveillance under this law. The FISC is also required to approve procedures developed and used by the Intelligence Community. It is important for the FISC to adhere to the limited role set forth in the text of this bill, and to recognize that it is a different role from that which it has traditionally held with regard to traditional, individual FISA applications. This should not be construed as an opening to insert the courts further into foreign intelligence matters that properly lie within the Executive's purview.

It is also important to note the flexibility that remains with the Executive Branch to prevent gaps from forming in the future that are similar to those we saw last August before the Protect America Act was passed. This bill permits the Attorney General and Director of National Intelligence to immediately authorize intelligence collection, as provided for under the law, upon a determination that ''exigent circumstances'' exist. While the text of the bill uses the term ''exigent circumstances,'' the use of this term is not intended to implicate in any way the use of that term in criminal procedure jurisprudence as an exception to the Fourth Amendment warrant requirement. See, e.g., U.S. v. Karo, 468 U.S. 705 (1984); Warden v. Hayden, 387 U.S. 294 (1967); McDonald v. U.S., 335 U.S. 451 (1948). Rather, section 702 specifically defines its use of the term ''exigent circumstances'' for purposes of targeting a foreign person reasonably believed to be located outside the United States as those circumstances that will result in the loss or failure to timely acquire intelligence important to the national security of the United States. The compromise text was delicately drafted and reaching compromise on the bill was premised, in part, on maintaining flexibility for the Intelligence Community to immediately initiate surveillance in situations where intelligence may be lost, or not gathered in time to act on in a way that best protects the United States. This section is designed to prevent the type of intelligence gaps that put us in a critical situation during the summer of 2007.

EXCLUSIVE MEANS

Section 102 of the bill provides that the procedures in FISA and in the relevant provisions of the federal criminal code are the exclusive means for electronic surveillance. It is important to note that section 102 of H.R. 6304 denotes the statutory exclusive means for acquiring foreign surveillance. In enacting this section, Congress did not intend legislatively abrogate any inherent Article II powers of the Executive Branch. See In re Sealed Case No. 02–001 (FISCR 2002) (citing the holding in U.S. v. Truong Dinh Hung, 629 F.2d 908 (4th Cir. 1980) that the President has inherent authority to conduct warrantless searches to obtain foreign intelligence information).

PROTECTIONS FOR ELECTRONIC COMMUNICATIONS SERVICE PROVIDERS

The provisions in Title II set forth a process under which the Federal district courts would have jurisdiction to review both prospective and retroactive claims relating to alleged assistance to the intelligence community. The standard and type of review by the courts with respect to the retroactive liability protections were issues of great and delicate debate while this bill was being drafted. Careful and lengthy discussions took place about which court would review the Attorney General certifications, what the certifications would contain, and what the standard of review would be, and all of these considerations culminated in the text of H.R. 6304 as it passed the House on June 20, 2008.

With respect to retroactive liability protection, the Attorney General must certify to the district court that one of two situations is present. Either the assistance alleged to have been provided by the carrier was authorized by the President, designed to detect or prevent a terrorist attack against the U.S. after the September 11th attacks, and was the subject of a written request or series of requests to the carrier, or the carrier did not provide the alleged assistance. The aforementioned written request or series of requests must have informed the communications provider that the activity requested was authorized by the President, and was determined to be lawful.

The statute expressly requires the Attorney General's certification to be given effect unless the court finds that the Attorney General's certification is not supported by substantial evidence that the statutorily required elements of the certification have been fulfilled. The provision also allows the court to review only certain specified supplemental materials (any relevant court order, certification, written request or directive) when considering the certification, and permits plaintiffs or defendants in civil actions to participate in briefing or argument of legal issues to the extent that such participation does not require the disclosure of classified information to such parties. Careful consideration went into the drafting of this provision, and the final text is very clear about what the federal district court may consider in its review under this section. The bill is intended to require and authorize the district courts to review exactly what the text of H.R. 6304 specifies, which does not include a review of the underlying legal basis for any representations that may have been made in a written request or series of requests for assistance to a company during the life of the Terrorist Surveillance Program. Rather, these provisions were intended to ensure that any companies that may have provided assistance to the government did so based on their good faith reliance on specified representations made to it by the Government.